

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the helical structure must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

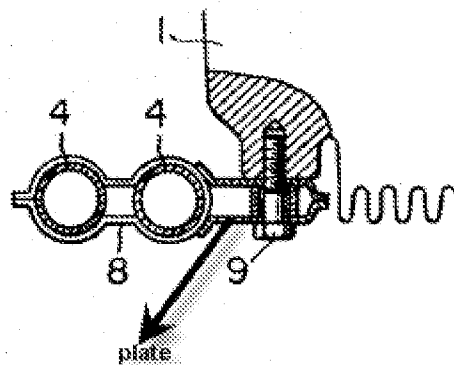
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 11, 13 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimada (US Patent 3,942,599).

Shimada teaches a motor vehicle including a combustion engine (1), a gearbox, an exhaust system (2, 8) and an exhaust system bracket (21a) for fastening the exhaust system, characterized in that the exhaust system (2, 8) is fastened to the gearbox (5, 6) through the exhaust system bracket (21a) which comprises a supporting element (11, 11a) in the form of a plate holder with at least two band-like, elastic plates (11, 11a) which are superimposed so as to form a stack (as shown in Figures 5-7 which clearly illustrates the plates (11, 11a) arranged one on top of the other); and the plates (11, 11a) are able to move relative to each other on at least a part of their length because they are attached by fasteners and not integral. The supporting element has an angular structure as seen in the longitudinal section. The supporting element, as seen in the longitudinal section, has a twofold angular structure in the form of an offset step, as shown in Figure 7. The supporting element, as seen in the longitudinal section, has a fourfold angular structure in the form of two offset steps which are arranged mirror-inverted to each other, as shown in Figure 7. The plates have a smooth surface. The plates have a structured surface. Re claim 17, the supporting element is fastened to the

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exhaust system by means of a supporting fixture/console (23). Re claim 18, see Figure 1 and bracket/mounting member (10). It is noted that Figures 7 and 8 are modifications to Figure 1; however, it is reasonable to interpret those elements not shown as modified to be the same in each embodiment. Re claim 19, as shown in Figure 6, the plates have corresponding cross-sections as seen in a longitudinal section. Re claim 20, as best understood, the bracket (21a) has a first end connected to the gearbox (5, 6) and a second end connected to the supporting element (plates 11, 11a), and each plate (11, 11a) of the supporting element has one plate end connected to the second end of the bracket (10) and an opposite plate end connected to the exhaust system (2, 8) via supporting fixture/console (23).

Aiba

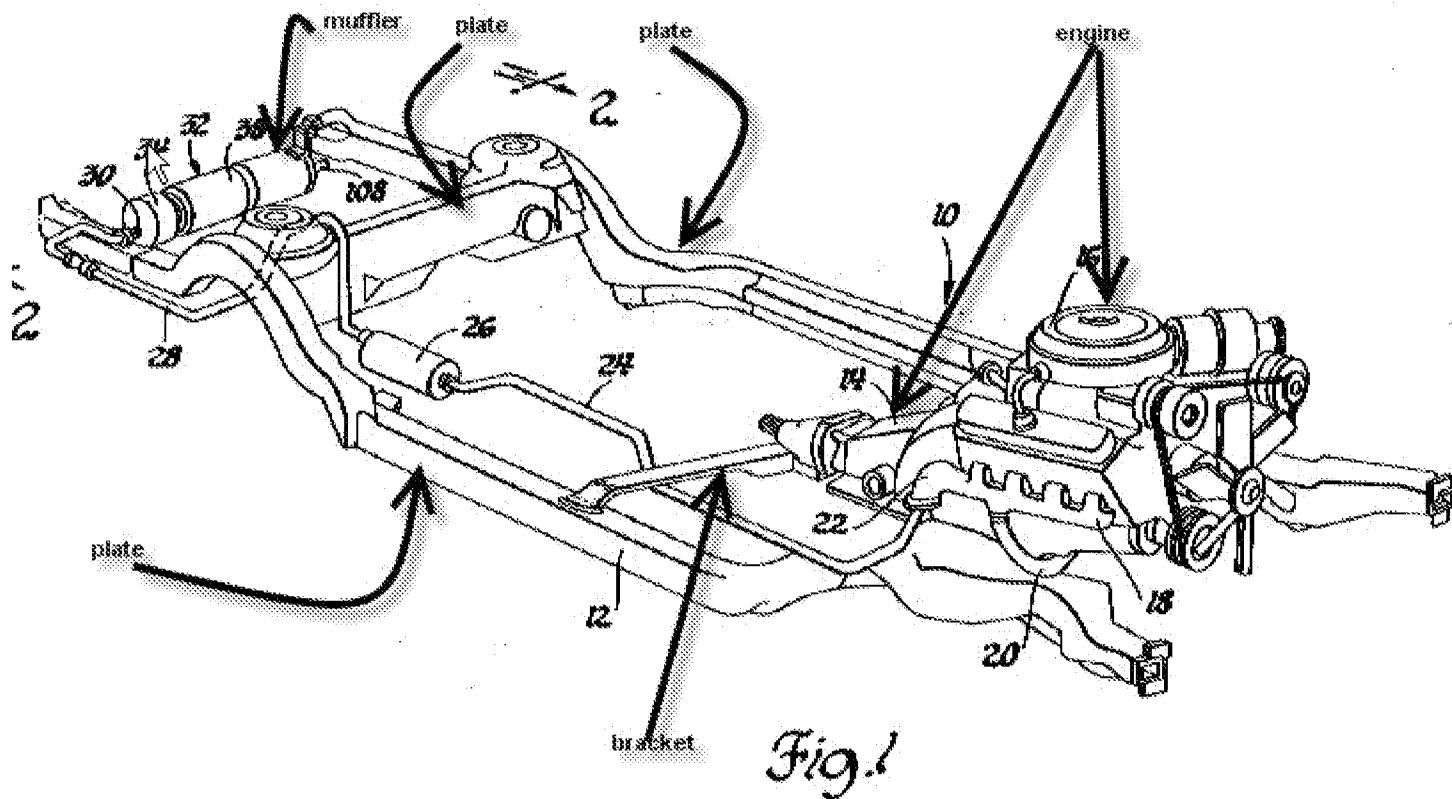
3. Claims 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Aiba (US Patent 4,359,126).

Aiba teaches an exhaust system mounting assembly including: a bracket (8) having a first and second bracket portion (shown in the Figure as a top portion and a

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bottom portion), the first bracket portion being adapted to be connected to an engine block (1) and a supporting element (note the separate structure labeled above connecting bracket 8 and component 9 in Figures 2 and 3) including a plurality of plates arranged in stacked relationship (one on top of the other), the supporting element having a first end connected to the second bracket portion and a second end connected to an exhaust component (9). The plates have corresponding cross-sections as seen in a longitudinal direction.

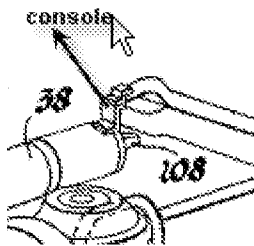
LUDECKE et al.



4. Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ludecke et al. (US Patent 4,264,344).

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Ludecke et al. teaches an exhaust system mounting assembly including: a bracket (see above) having a first and second bracket portion, the first bracket portion being adapted to be connected to an engine block (14) and a supporting element including a plurality of plates (clearly labeled above) arranged in stacked relationship (one on top of the other), the supporting element having a first end connected to the second bracket portion and a second end connected to an exhaust component (muffler). The plates have corresponding cross-sections as seen in a longitudinal direction.



Re claim 23, the assembly includes a console (as shown above) that connects the second end of the supporting element to the exhaust system component. The plates are band-like because they are assembled or united in a group, as defined by the American Heritage Dictionary of the English Language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 5-10, 12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada ('599).

Shimada teaches the features described above.

Shimada lacks the teaching of a helical structure, austenitic material, ferritic material, spring steel, plates made of different materials, plates having a different thickness, plates having a rough surface, plates fastened to each other by screwing, welding or a form-fitting and/or force-fitting connection, a flanged plate, and the teaching of three, four or five plates.

The provision of a helical structure or a flanged plate represents a change in shape which is well within the level of ordinary skill in the art. The use of old and well known materials would have been obvious to one having ordinary skill in the art. The provision of well known fastening methods such as screwing and welding would have been obvious to one having ordinary skill in the art. The provision of three, four, or five plates is an obvious duplication of parts which is well within the level of ordinary skill in the art. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the

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combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada ('344).

Ludecke et al. teaches the features described above.

Ludecke et al. lacks the teaching of elastic.

However, the use of elastic material is old and well known. The provision of elastic material to manufacture any of the plates would have been obvious to one of ordinary skill in the art to permit deformation.

Response to Arguments

7. Applicant's arguments filed January 13, 2010 have been fully considered but they are not persuasive. Contrary to applicant's argument that element 11a in Shimada (US Patent 1,942,599) does not comprise a stacked plate as defined in claim 1, the plates 11 and 11a are shown in Figures 5-7 arranged one on top of the other. Clearly, Shimada ('599) teaches applicant's invention as defined in claim 1.

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8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., band-like stacked plates defines as a flat shape with a length that is considerably larger than its width, and a thickness that is considerably smaller than its width) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 107 (Fed. Cir. 1993). The invention defined in the claims is not novel. Applicant has failed to claim structure not taught by the prior art.

9. Contrary to applicant's arguments, it is reasonable to interpret the plates (11 and 11a) as stacked because they are positioned one on top of the other. Applicant, on page 7, lines 20-21 disclose "elastic plates which lie one on top of the other" and Shimada teaches plates (11, 11a) where plate (11a) is a cushioned and made of rubber or other resilient material. Claim 1 fails to define structure not taught by Shimada ('599). Further, because the bracket (21a) is clearly attached to the plate (11) it is reasonable to interpret the bracket as a "plate holder" that supports the plates.

10. Re applicant's argument concerning claim 2, the angular structure is clearly shown in Figures 5-7. Elements 11 and 11a each show angles (this is clearly shown in the cutout of Figure 6). Based on the position that elements 11 and 11a assume in Figure 1, the longitudinal section extends across the plates (between the holes shown on plate 11). Clearly each of the plates show an angular structure.

11. Re applicant's argument of claim 11 and 13, each of the plates is shown in Figures 5 and 7 as having a smooth surface (see the top surface of heat insulating plate

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11 and plate 11a is shown to have a smooth surface at least on a portion of the top surface and the inner surface is shown to be smooth. Further, in regards to claim 13, the plate 11a is shown to have a structured surface (note the ridges) on the side that is closest to the bracket 21a and plate 11 is clearly shown in Figure 7 to have a structured surface (note the indentation) at the angled portion that is attached to the bracket 21a.

12. In response to applicant's argument that "one of ordinary skill in the art would never interpret the vehicle frame of Ludecke et al. as corresponding to the claimed stacked plates of a supporting element, the examiner disagrees. Applicant's use of broad terms to define his invention is what permits the application of various elements to meet his claimed invention. One of ordinary skill in the art would certainly consider a vehicle frame to be a "supporting element." Ludecke et al. uses stacked plates to make up his vehicle frame and applicant merely claims "a supporting element comprised of a plurality of plates arranged in a stacked relationship". The use of terms that more specifically define applicant's invention might overcome the prior art rejections.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIDGET AVERY whose telephone number is (571)272-6691. The examiner can normally be reached on Monday-Thursday from 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris, can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Bridget Avery/
Examiner, Art Unit 3618

/GLENN DAYOAN/
Supervisory Patent Examiner, Art
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